

OGC HAS REVIEWED.

Assistant Chief, Budget and Finance

31 December 1948

Office of the General Counsel

Reclaim Covering Drivers License Fees

1. Your memorandum of 24 December 1948, presented the question of reimbursement to a Government employee for the expense of obtaining a drivers license in connection with Government owned passenger vehicles for official business.

2. In an opinion dated March 19, 1924 (3 Comp. Gen. 662) the Comptroller General stated that:

"The facilities of the Federal Government are not subject to local state ordinances or regulations and where such an ordinance or regulation of a municipal fire department requires that a permit be obtained for the operation of a gasoline pump, such permit to be issued upon examination and payment of a fee, a Federal employee, whose official duties require the operation of a Federal gasoline pump, is not required to stand the examination or to pay the fee."

The immunity of the Federal Government from interference by a state or municipality is based on the decision in *Johnson v. Maryland*, 254 U.S. 51. That was a case in which an employee of the Post Office Department, while driving a mail truck, was arrested, tried, convicted and fined for not possessing a Maryland driver's license. The court denied the power of the State of Maryland to require an employee of the Federal Government to submit to an examination or to pay a license fee before performing his official duties in obedience to orders. In denying that the state had such power, the court said:

"Such a requirement does not merely touch the Government servants remotely by a general rule of conduct; it lays hold of them in their specific attempt to obey orders and requires qualifications in addition to those that the Government has pronounced sufficient. It is the duty of the Department to employ persons competent for their work and that duty it must be presumed has been performed."

The rule, of course, applies equally to a municipality which is a lesser unit of the state. The Comptroller deviated from a firm position, however, and stated that even if the employees were required to obtain the permits and pay the necessary fees the requirement would be a personal expense incidental to their qualification for work and reimbursement from appropriated funds would not be authorized. This compromise seems to indicate at the least a lack of certainty in the reasoning behind this opinion. In 15 Comp. Gen. 519, the first opinion was confirmed and the qualification of the expense as a personal one to the employee was restated. (Actually, in this case, the expense was

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allowed as a matter of reimbursement, but only because the employee was a member of the Civilian Conservation Corps and the Comptroller reasoned that the employment was largely in the nature of relief and to deny payment of the charge would controvert the nature of the employment itself.) The same line of reasoning was followed in 21 Comp. Gen. 769 - but with better justification - where reimbursement of the cost of a chauffeur's license for an employee of a CPFF contractor was denied. The Comptroller again felt that the expense was personal to the employee as an incident to his employment. The Comptroller's manner of thinking is somewhat clarified by his opinion in 25 Comp. Gen. 10, where payment for a license exempting the purchaser of fuel from payment of state tax was allowed. In a previous decision (21 Comp. Gen. 843) he had decided that the Federal Government was liable for a state fuel tax since the State had the right to decide on whom the incidents of the tax should fall, and the State had decided that it fell upon the vendor rather than the Government. It was, therefore, a legitimate charge not directly interfering with the function of the Government, since it was not a tax but a condition under which a privilege was extended.

3. Your association of this problem to that of the payment of metered parking space appears to be perfectly correct in view of the fact that the answers to both problems stem from the interpretation of sovereign immunity given by the Supreme Court in *Johnson v. Maryland*. If *Johnson v. Maryland* is to be followed to its ultimate deduction, there would seem to be no doubt about the employees' immunity from payment of the license fee while driving a Government vehicle in the course of his official duties. The Comptroller has evaded a definite stand along this line, however, and has refused payment on the basis that payment of the fee is an element of the employee's qualification for duty. Although this does not appear to be particularly sound, it is nevertheless the fact and reimbursement of the charge cannot be authorized.

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